



California State Board of Education Policy

POLICY #
01-08
DATE
December 2001

WAIVER GUIDELINES

Public Schools Accountability Act: Impact of the Scores of English Language Learners

REFERENCES

Standardized Testing and Reporting (STAR) Program Settlement *California Department of Education, et al. v. San Francisco Unified School District, et al. Public Schools Accountability Act of 1999, Education Code Section 52050 et seq. Education Code Section 33050 et seq. (Authority for Waiver)*

HISTORICAL NOTES

None.

Statutory Provisions/Regulations Involved

Various provisions of the *Education Code* and of CCR Title 5 related to benefits to schools under the *Public Schools Accountability Act of 1999*.

Background

A lawsuit involving the California Department of Education (CDE), the State Superintendent of Public Instruction (SSPI), the State Board of Education (SBE), the San Francisco Unified School District, and other districts and parties was recently concluded. For purposes of implementing the settlement in *California Department of Education, et al. v. San Francisco Unified School District, et al. (CDE, et al. v. SFUSD, et al.)* and related cross actions, the SBE is adopting this policy to govern the consideration of waivers relating to the *Public Schools Accountability Act of 1999* (PSAA) as required by Paragraph 3 of the settlement.

Paragraph 3 of the settlement states:

"3. Where the basis for denying rewards, implementing interventions or taking any other action affecting a school or district under the Public School Accountability Act is shown by a district to be solely attributable to the scores of ELL students, the district, on its own behalf or on behalf of a school, may submit a request for a general waiver to the State Board of Education pursuant to Education Code Section 33050 based on such facts. CDE will recommend that the SBE as a matter of policy consider favorably, among other factors which the SBE or CDE may consider, a showing of improvement in student performance on the ELD test, when implemented. The SBE agrees to use its best efforts to implement and adopt the policy set forth in this Agreement as soon as reasonably possible."

For purposes of implementing this paragraph, if the CDE or the SBE takes an action that affects a school or district with respect to the PSAA and the action is based solely on the test scores of English Learner (EL) students, and that action has a negative impact on an individual school or district, the school district may apply to the SBE for a waiver (pursuant to *Education Code* Section 33050 et seq.) of the relevant provisions of the *Education Code* or Title 5 of the California Code of Regulations (5 CCR) to the extent that the provisions are waivable.

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Evaluation Guidelines

In the preparation of the waiver, the District must:

- Establish, to the satisfaction of the SBE, that a negative impact has occurred.
- Submit a waiver for each individual school affected.
- Define and quantify the programmatic and fiscal nature of the negative impact for each occurrence. The programmatic and fiscal impact could include receiving awards, eligibility for II/USP, and eligibility for other state funding programs that are based on the Academic Performance Index (API).
- Show that the action that has negatively impacted the school or district is solely attributable to the test scores of EL students.

As a part of its deliberations, the SBE may consider favorably, in addition to other relevant factors, evidence of improvement or growth in EL student performance on the California English Language Development Test (CELDT). Other relevant factors may include a school's or district's reclassification rate or the amount of time EL students are in an EL program before they are reclassified as fluent English proficient.

Therefore, as a part of the waiver request, the district must also:

- Show the growth in CELDT test scores of EL students, including the amount of growth and the length of time over which the improvement has occurred.

The SBE retains the authority to deny the waiver under any of the conditions set forth in *Education Code* Section 33051(a).